IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

WP(C).No. 1585 of 2007(L)

PETITIONER:

R.PRADEEP KUMAR, S/O.S.RAMANKUTTY NAIR,
VANAJAMANDIRAM, KIZHAKKEPURAM,
NORTH PARUR, ERNAKULAM DISTRICT.

BY ADV. SRI.P.GEORGE WILLIAM
SRI.O.F.JUSTIN

RESPONDENTS:
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1. THE PRINCIPAL SECRETARY,
HOME (K) DEPARTMENT, TRIVANDRUM.

2. DIRECTOR OF PANCHAYAT,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 1585 OF 2007

Dated this the 30th January, 2007.

JUDGMENT

The petitioner has been offered employment under the dying in harness scheme and an order has been issued informing him that he has been allotted for posting as Lower Division Clerk in the Panchayat department, Thrissur district. The petitioner insists that since his father who died in harness was in the Police Department, he shall be given employment under the dying in harness scheme in that department only and he do not want appointment in any other department. Such a stand is taken placing reliance on Clause 30 of G.O(P)12/99/P&ARD dated 24.5.1999. The above clause reads:-

> "Appointment of dependents in general category posts such as Lower Division Clerk, Lower Division Typist, Peon etc., will be made in the concerned Department itself against an existing or arising vacancy."

Counsel for the petitioner submits that Ext.P4 order has been passed without adverting to Clause 30 of the above G.O.

2. It is true that the stand taken by the respondents in Ext.P4 is that a person who seeks employment under the dying in harness scheme cannot insist that he shall be appointed in a particular department because there is no such condition in the relevant G.O.

3. Govt. Pleader was directed to seek instructions as to why despite Clause 30, the Government issued an order in the nature of Ext.P5.

4. Govt. Pleader on instruction submits that as a matter of fact the Government had considered the existence of vacancies in the post of Lower Division Clerks in the Police Department but on finding that there was no open vacancy against which a person who applies for compassionate appointment under the dying in harness scheme could be accommodated, the Government considered the possibility of appointing the petitioner in any other department. Govt. Pleader brings to my notice Clause 33 of the very same G.O. Clause 33 reads thus:-

> "If none of the alternatives mentioned in paras 30, 31 or 32 above is possible for want of vacancies, such cases shall be referred to the General Administration (C.E.Cell) Department for allotment of vacancies."

5. I find that the stand taken by the Government is just since Clause 33 says that it is open to the Government to look for alternatives in cases where appointments cannot be given for want of vacancies in a particular department. The Home Department therefore referred the matter to the General Administration (C.E.Cell) Department for allotment of vacancies. That being the position, there is neither justification nor rationale for the petitioner to insist that he should be allotted for posting only in the Police

Department. Appointment under the dying in harness scheme is a concession. The beneficiary is not required to compete with others in the open market. The Hon'ble Supreme Court has held that there is no question of treating the above facility as if it is comparable with the reservation of a post. I make it clear that if the petitioner is not desirous of getting appointment as Clerk in the Panchayat department, as offered by the Government, it is open to him to relinquish his claim. He shall inform the Director of Panchayats about his willingness or otherwise to accept appointment in terms of Ext.P4. This shall be done within one month from today. If no such intimation is received from the petitioner, the Government will be free to proceed on the presumption that the petitioner is not interested in getting appointment,under the dying in harness scheme. If, on the other hand, the petitioner informs his willingness to accept the job, the Government shall proceed to give effect to Ext.P4. Writ petition is disposed of with the above directions.

K.K.DENESAN
Judge

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